IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 544 OF 2004

Mrs. Maria A. Pereira,
Major, Married, Service,
Daughter of Mr. Carlos
A.P. Fernandes,
Resident of H. No.270,
Chimbel, Ilhas Goa. ... Petitioner

versus

1. Manonmaniam Sundaranar
University, Directorate of
Distance and Continuing
Education, Through its Registrar,
Abishekapatti, Tirunelveli,
Tamil Nadu-627 012
India.

2. The Goa Correspondence College,
Through its Co-ordinator
Shri Elston Fernandes,
F-21, Vrindavan Chambers,
Near Patto Bridge, 4th floor,
Panaji-Goa. ... Respondents

Ms. Amira Razak, Advocate for the Petitioner.

Mrs. A. A. Agni with Mrs.N. Narvekar, Advocates for the Respondent No.1.

Mr. R. Pednekar, Advocate for the Respondent No.2.

CORAM : D. D. SINHA &
N. A. BRITTO, JJ.

DATE OF RESERVING
THE JUDGMENT:30-11-2005.

DATE OF PRONOUNCING
THE JUDGMENT: 12-12-2005.

JUDGMENT(Per N.A.BRITTO, J.)

The Petitioner who has passed Standard XII in Commerce and who is working in this Court as Stenographer (Higher Grade) claims that in January, 2001 she came across an advertisement in the newspapers about Distance Learning Courses being conducted by the Respondent No.1-University and enrolled herself for a 3 years Bachelor of Arts in Literature Course with the Respondent No.1-University on or about 16th March, 2002 with a view to improve her prospects, as this Court had made graduation essential for promotional posts. The Respondent No.1-University has their study/admission center in the State of Goa known as Education Promotion Trust run by Mr. Elston Fernandes, Managing Trustee. Although the Petitioner disputes the name of the said center there is no dispute that Elston Fernandes is the co-ordinator of the examinations held by Respondent No.1-University.

2. The main grievance of the Petitioner, in this Petition, is that both the Respondents have failed to hand over to the Petitioner the Second Year Mark-Sheet and other documents.

3. The Petitioner in July/August, 2002, answered her examination for the First Year of B.A. Degree Course. The said examination was otherwise to be conducted in May, 2002. The Petitioner was absent for two papers, namely, Indian Writing in English(DMIC) and Social History of England(DMID) and failed in Hindi paper(D1K1). The results of the said examination were announced on 23-12-2002 and the Mark-Sheet has been annexed by the Petitioner at page 70 of the Paper Book, which shows the said position. Even if a student fails in the First Year, as per the Regulations of the University, the student is allowed to keep terms for the Second Year and all that is required is that 22 subjects are to be answered and passed in order to get the degree in B.A.(English Literature).

4. The Petitioner, having failed in one subject and having not appeared in two subjects, appeared for

supplementary examination held in November, 2002 and this time the Petitioner passed in Hindi Prose(D1K1) and Indian Writing in English(DMIC) but failed in Social History of England (DMID) having secured only 24 marks, minimum passing marks being 35. The Petitioner produced the said Mark-Sheet at page 71 of the Paper Book. The Petitioner on or about 31-3-2004 applied for re-assessment/revaluation of the said Paper-IV-Social History of England(DMID) but received no reply from the University. As per the Petitioner some time in August, 2003, the said Elston Fernandes had verbally informed her that in the examination of May, 2002, the Petitioner had obtained 35 marks in Hindi(D1K1), 39 marks in Indian Writing in English(D1MC) and 40 marks in Social History of England(DIMD) and she had noted down the same. If that is so, one fails to understand as to why the Petitioner answered the remaining 3 papers in November, 2002. Respondent No.2 has stated that the said statement of the Petitioner is false. The Respondents have denied that the Petitioner was ever shown on a consolidated examination result sheet of November, 2002 showing that the Petitioner had secured 40 marks in Paper-IV-Social History of England(DMID) and it has been stated by Respondent No.2 that

whatever consolidated Mark-Sheet as on 14-10-2004 was received was collected by the Petitioner and it showed that the Petitioner had secured 24 marks. As far as the revaluation of the paper of the Petitioner in the said subject in which the Petitioner failed, on behalf of the University, it has been submitted and otherwise also stated in the affidavit filed by G. Rajaram, the Director of Distance and Continuing Education of the said University, that the facility of revaluation for the students of Distance and Continuing Education had been discontinued since November, 2001 and it has been discontinued because the University has centers for distant education spread throughout the country as also abroad i.e. to say at U.A.E. and Abu Dhabi and in case the said facility of revaluation is granted to the students of distant education, the entire time frame structure of finalisation of results of the said courses goes haywire considering the time consumed in receiving the application from all the study centers while as regards regular students who are from three districts to which the University Act extends, application for revaluation is required to be filed within a period of ten days. It has also been stated that the University does not retain the examination papers after one year and they destroy

the same.

5. It is the submission of learned Counsel Ms. Amira Razak, on behalf of the Petitioner that the Respondent No.1-University may at least be directed to declare the Petitioner as passed in that subject of Social History of England(DMID). We are not inclined to accept this submission. The Petitioner has not shown any rule or regulation of the University either from the prospectus or from any other regulations which entitles the Petitioner to have re-examination or revaluation of her answer papers and in the absence of any rule or regulation governing the same, we have no other option but to accept the statement made by the said Director of the University that the facility of revaluation is now not available to distant education students, like the Petitioner. It has also been stated that the said paper in which the Petitioner has failed has been destroyed after a period of one year and, therefore, in our view, no such direction can be issued to the University to declare the Petitioner passed in the First Year subject Paper-IV-Social History of England(DMID) when in fact the Petitioner has failed in that subject as per Mark-Sheet at page 71 of the paper book or the consolidated Mark-Sheet at page 107 of the paper book.

6. The petitioner in November, 2003, appeared for the Second Year examination and her results were withheld by the University because of the dispute on account of non payment of examination fees by the Petitioner. This Court vide its Order dated 5-7-2005 noted the existence of the said dispute between the Petitioner and the Respondent No.1-University regarding the non payment of examination fees and after the University declared that they were prepared to declare the results of the Petitioner for the Second Year on the Petitioner depositing in this Court a sum of Rs.470/-, the Petitioner deposited the said sum of Rs.470/- and the Petitioner was furnished a passing Mark-Sheet on 28-7-2005 and, therefore, nothing survives regarding the main grievance of the Petitioner except as to who should be directed to be paid the said sum of Rs.470/- deposited by the Petitioner by virtue of the Order of this Court dated 5-7-2005.

7. The Petitioner also appeared for one subject of Third Year examination in May, 2004 namely Twentieth Century Literature(DM3A) and passed the same and there is no grievance

made by the Petitioner as regards the same.

8. The Petitioner has alleged in the Petition that at the examination she appeared particularly for the First Year and the Second Year, she had found a lot of students cheating and copying and she had complained about the same to the said Elston Fernandes. The Petitioner has also stated that while answering the first paper of Third Year the said Elston Fernandes insulted and threatened her and for that reason she did not answer the remaining papers. The Petitioner has made her intention clear in her letter dated 13-7-2004 sent to the University that she does not wish to continue her graduation with the Respondent No.1-University and, therefore, has also sought for a direction to the University to issue to her Migration Certificate as well as a Transfer Certificate. The Respondent No.1-University in their reply dated 22-3-2005 had made it clear that no Transfer Certificate is being issued to the distant education students by the Respondent No.2 but a course completion/part certificate is issued on payment of requisite fees to the students. It has also been stated that a Migration Certificate could be issued to the Petitioner, being a student of distant education, if an application in proper format is made and the required fees are paid. Both the Respondents have stated that the Petitioner was required to forward the Migration form duly filled in to the

Controller of Examination but no such form was forwarded to the Respondent No.1-University.

9. We direct the Respondent No.1-University to issue a Migration Certificate, if required by the Petitioner, within a period of one month after the Petitioner makes an application in proper format and pays the required fees.

10. As regards the dispute of non payment of examination fee for Second Year, as noted by this Court in Order dated 5-7-2005 it appears that it is the contention of the Petitioner that the same was included in the payments made to Respondent No.2, namely Rs.1,500/- paid on 8-8-2002 (College fees), Rs.1,450/- paid by D.D. dated 24-9-2002(University fees) and Rs.500/-(further fees). However, on behalf of Respondent No.1 a copy of the Regulations(at page 168) have been filed and they show that the examination fee should not be clubbed with the tuition fee and the examination fee should be paid by Demand Draft only drawn in favour of the Registrar, M.S. University. There is no categorical statement from the Petitioner that examination fees were paid or were paid as required. This Court has already noted that there was a dispute regarding the payment of the examination fee in the sum of Rs.470/- which the Petitioner

subsequently deposited before this Court pursuant to the Order of this Court dated 5-7-2005. The Petitioner might have sent tuition/University fees regarding Second Year vide D.D. No.020151610 dated 24-9-2002 for Rs.1450/- favouring the Registrar, M. S. University which appears was wrongly recorded as having been received in the name of some other student, in the records of the University. The Petitioner has produced no record that she had paid the examination fee of Rs.470/- by Demand Draft as required. We are prima facie not satisfied in the Petitioner's contention and, therefore, we direct that the said sum of Rs.470/- deposited by the Petitioner as per Order dated 5-7-2005 be refunded to the Respondent No.1-University. Petitioner would be at liberty to claim the same from Respondent No.2 in case it was at all paid by the Petitioner to Respondent No.2 on behalf of Respondent No.1-University.

11. In view of the above, Petition is partly allowed and Rule is partly made absolute in the light of the direction given, with no order as to costs.

D. D. SINHA, J.

N. A. BRITTO, J.

RD.